

**SUBCHAPTER J: PUBLIC NOTICE OF WATER QUALITY APPLICATIONS AND
WATER QUALITY MANAGEMENT PLANS**

**§39.551, §39.553
Effective June 24, 2010**

**§39.551. Application for Wastewater Discharge Permit, Including
Application for the Disposal of Sewage Sludge or Water Treatment Sludge.**

(a) Applicability. This section applies to applications for wastewater discharge permits, including disposal of sewage sludge or water treatment sludge applications that are declared administratively complete on or after September 1, 1999. This subchapter does not apply to registrations and notifications for sludge disposal under §312.13 of this title (relating to Actions and Notice).

(b) Notice of receipt of application and intent to obtain permit.

(1) Notice under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director deems an application administratively complete. This notice must contain the text as required by §39.411(b)(1) - (9) and (11) of this title (relating to Text of Public Notice). In addition to the requirements of §39.418 of this title, the chief clerk shall mail notice to the School Land Board if the application will affect lands dedicated to the permanent school fund. The notice shall be in the form required by Texas Water Code, §5.115(c).

(2) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendments); or

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(3) For permits listed in paragraph (2)(C) of this subsection, the executive director will require the applicant to post a copy of the notice of receipt of application and intent to obtain a permit. The notice must be posted within 30 days of the application being declared administratively complete and remain posted until

the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(c) Notice of application and preliminary decision. Notice under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) of this title. In addition to §39.419 of this title, for all applications except applications to renew permits, the following provisions apply.

(1) The applicant shall publish notice of application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(A) For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.413 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(B) If the notice of the receipt of application and intent to obtain a permit was mailed more than two years prior to the time that notice of application and preliminary decision is scheduled by the executive director to be mailed, the applicant must submit an updated landowner map, landowner list, and any associated information for mailing the notice of application and preliminary decision. Notwithstanding this requirement, the Executive Director may require an updated landowner map, landowner list, and any associated information for mailing the notice of the application and preliminary decision if circumstances in the area have significantly changed that warrant updated lists.

(3) The notice must set a deadline to file public comment with the chief clerk that is not less than 30 days after newspaper publication. However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment.

(4) For TPDES permits, the text of the notice shall include:

(A) everything that is required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(5) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

(B) an application for a new TPDES permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title; or

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(6) For permits listed in paragraph (5)(C) of this subsection, the executive director will require the applicant to post a copy of the notice of application and preliminary decision. The notice must be posted on or before the first day of published newspaper notice and must remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(d) Notice of application and preliminary decision for certain TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply:

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the following mailed and published notice is required.

(A) The applicant shall publish notice of the application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(B) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to those listed in §39.413 of this title.

(C) The notice must set a deadline to file public comment, or to request a public meeting, with the chief clerk that is at least 30 days after newspaper publication.

(D) The text of the notice shall include:

(i) everything that is required by §39.411(b)(1) - (3), (5) - (7), (9), and (11) and (c)(2) - (6) of this title;

(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(iii) for applications concerning the disposal of sludge:

(I) the use and disposal practices;

(II) the location of the sludge treatment works treating domestic sewage sludge; and

(III) the use and disposal sites known at the time of permit application.

(2) If the application proposes any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the applicant must follow the notice requirements of subsection (b) of this section.

(e) Notice for other types of applications. Except as required by subsections (a), (b), and (c) of this section, the following notice is required for certain applications.

(1) For an application for a minor amendment to a permit other than a TPDES permit, or for an application for a minor modification of a TPDES permit, under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice, that the executive director has determined the application is technically complete and has prepared a draft permit, to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall be no earlier than ten days after mailing notice.

(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.

(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title, the following requirements apply.

(A) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments and to request a public meeting to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists); and

(vii) any other person the executive director or chief clerk may elect to include.

(B) For TPDES major facility permits as designated by the United States Environmental Protection Agency on an annual basis, notice shall be published in the *Texas Register*.

(C) The text shall meet the requirements in §39.411(b)(1) - (4)(A), (6), (7), (9), and (11) and (c)(4) - (6) of this title.

(D) The notice shall provide at least a 30-day public comment period.

(E) The executive director shall prepare a response to all relevant and material or significant public comments received by the commission under §55.152 of this title (relating to Public Comment Period).

(f) Notice of contested case hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.413 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) everything that is required by §39.411(d)(1) and (2) of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(g) Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subsection D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the agency's library located at the commission's central office located at 12100 Park 35 Circle, Building A, Austin.

Adopted June 2, 2010

Effective June 24, 2010

§39.553. Water Quality Management Plan Updates.

(a) Applicability. This section applies to Water Quality Management Plan (WQMP) Updates.

(b) Notice of WQMP updates.

(1) The chief clerk shall publish notice of the WQMP update in the *Texas Register*.

(2) The chief clerk shall mail the notice of the WQMP update to persons known to the commission to be interested in the WQMP update, and to persons requesting notices of the WQMP identified on mailing lists maintained by the chief clerk, in accordance with §39.407 of this title (relating to Mailing Lists).

(3) Section 39.411 of this title (relating to Text of Public Notice) does not apply to WQMP updates. However, the notice of the WQMP update shall:

(A) include the name and address of the agency;

(B) provide an opportunity to submit written comments on the proposed WQMP update;

(C) describe the public comment procedures and the time and place of any public meeting; and

(D) include the name, address, and telephone number of an agency contact person from whom interested persons may obtain information.

(4) The notice shall provide at least a 30-day public comment period.

(5) Any public meeting shall be held and conducted in accordance with the requirements and procedures of §55.156 of this title (relating to Public Comment Processing).

(c) The executive director shall prepare a response to all significant public comments received by the commission before the end of the comment period. The executive director may revise the WQMP update based on public comment, if appropriate.

(d) As described in §50.133 of this title (relating to Executive Director Action on Application or WQMP Update), the executive director may certify the WQMP update.

(e) After the executive director certifies a WQMP update, the Chief Clerk shall mail a copy of the Response to Comments and certified WQMP update to all persons who submitted timely comments.

Adopted September 2, 1999

Effective September 23, 1999